

OCT. 23. 2006 5:17PM

ZILKA-KOTAB, PC

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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Tarbotton et al.

Application No. 10/028,651

Filed: 12/20/2001

For: SYSTEM, METHOD AND
COMPUTER PROGRAM PRODUCT
FOR PRECLUDING WRITES TO
CRITICAL FILES

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) Art Unit: 2137
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) Examiner: Pyzocha, Michael J.
)
) Date: 10/23/2006
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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

ATTENTION: Board of Patent Appeals and Interferences

REPLY BRIEF (37 C.F.R. § 41.37)

This Reply Brief is being filed within two (2) months of the mailing of the Examiner's Answer mailed on 08/23/2006.

Following is an issue-by-issue reply to the Examiner's Answer.

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Issue # 1:

The Examiner has rejected Claims 1-7, 9-10, 12-20, 22-23, 25-28, and 30 under 35 U.S.C. 103(a) as being unpatentable over "Q222193- Description of the Windows 2000 Windows File Protection Feature" (hereinafter WFP), in view of Rickey et al. (U.S. Publication No. 2002/0166059).

Group #1: Claims 1-2, 4-7, 13-15, 17-20, and 26-27

With respect to the current grouping, and specifically appellant's claimed technique "wherein the factors are altered based on the monitoring of the requests to write to the files on the computer," the Examiner has responded to appellant's arguments, in the Office Action mailed 1/12/06, by stating that "when WFP is monitoring for modifications to files the write request is part of the change and therefore part of the monitoring." First, appellant respectfully asserts that what is claimed is "factors [that] are altered based on the monitoring of the requests" (emphasis added), and not merely monitoring write requests, as the Examiner argued. Appellant emphasizes that WFP teaches that the "Windows File Protection feature is implemented when it is notified that a file in a protected folder is modified" and that a "second protection mechanism [is]...the System File Checker tool [that] scans all protected files to ensure they are not modified." Thus, WFP only discloses a situation where it is determined if a file has already been modified, and not altering factors "based on the monitoring of the requests" (emphasis added), as claimed by appellant. Furthermore, WFP discloses restoring a file to a correct Microsoft version, but not altering factors associated with the computer, in the manner claimed by appellant.

In the Examiner's Answer mailed 08/23/2006, the Examiner has argued that "[a]s described on page 4 of appellant's specification, 'the factors are selected from the group consisting of critical files, critical file locations, and trusted applications'" and that therefore "the critical files of WFP are the claimed factors." Further, the Examiner has argued that "since files are factors, as disclosed in appellant's specification, changing a modified file to a correct version is altering that factor." However, appellant respectfully points out that what is claimed is a technique "wherein the factors are altered based on the monitoring of the requests to write to the files on the computer" and the factors may include, but are not necessarily limited to "the group consisting of

critical files, critical file locations, and trusted applications,” as the Examiner’s contends. Thus, despite the Examiner’s arguments, WFP clearly fails to meet appellant’s claimed “factors [that] are altered based on the monitoring of the requests” (emphasis added), as claimed.

Further, in the Examiner’s Answer mailed 08/23/2006, the Examiner has argued that “WFP monitors a file system to determine when a file has been modified, and whenever a file is modified a write occurs in the system and with every write call exists a write request, therefore, WFP monitors write requests.” Appellant respectfully disagrees with the Examiner’s argument and asserts that the mere disclosure of notification when a file has been modified simply fails to even suggest that WFP monitors “requests to write to the files,” as claimed by appellant. Specifically, WFP discloses that “it is notified that a file in a protected folder is modified” (bottom of Page 1 - emphasis added). However, the mere disclosure by WFP of being notified when a file is modified simply fails to even suggest that “factors are altered based on the monitoring of the requests to write to the files on the computer” (emphasis added), as claimed by appellant. Clearly, WFP’s notification when a file is modified fails to meet appellant’s claimed “monitoring of the requests to write to the files,” in the manner as claimed by appellant.

Second, appellant respectfully disagrees with the Examiner’s argument that “each time a file [is] written (i.e. modified) a write request occurs” such that “the write request [which is] part of the change... [is] therefore part of the monitoring,” as noted in the Office Action mailed 1/12/06. Specifically, WFP only teaches that the “Windows File Protection feature is implemented when it is notified that a file in a protected folder is modified” and that “[o]nce the notification is received, the Windows File Protection feature determines which file was changed” (emphasis added). Thus, in WFP, the monitoring is performed with respect to when an actual modification has already been made, and not to when a request to write to the files on the computer is made, in the manner claimed by appellant. To emphasize, appellant claims altering factors based on a request, and not merely a file modification that has already been made, as in WFP. As such, appellant’s claim language allows for the “writes to the files on the computer” to be prevented such that the modification is not made, in the manner claimed.

In the Examiner’s Answer mailed 08/23/2006, the Examiner has argued that “when a modification to a file protected by WFP is made that places it in an incorrect version, it is

replaced with the correct version” and that “[t]his replacement is based on the determination that the file is an incorrect version, thereby preventing the incorrect version from being written.” Appellant respectfully disagrees with the Examiner’s argument, and asserts that WFP instead merely discloses that “it is notified that a file in a protected folder is modified” and that “if the file is protected, the Windows File Protection feature looks up the file signature in a catalog to determine if the new file is the correct Microsoft version” (bottom of Page 1 – emphasis added). Appellant asserts that WFP’s disclosure that the file is modified resulting in a new file which causes WFP to look up the file signature in a catalog to determine if it is the correct Microsoft version, contradicts the Examiner’s argument that the WFP’s “replacement ... prevent[s] the incorrect version from being written.” Again, appellant’s claim language allows for the “writes to the files on the computer” to be prevented, as claimed, such that the modification to the file is not made. Clearly, WFP’s disclosure of replacing the new file after it is modified fails to suggest preventing “writes to the files on the computer,” in the manner as claimed by appellant.

Further, appellant respectfully asserts that if WFP prevented writes to the file, as asserted by the Examiner, then the file would not need to be replaced since the file would be prevented from being modified to the incorrect version. Clearly, since WFP discloses that a modified file of an incorrect version is replaced with the correct version, WFP fails to meet appellant’s claimed preventing “writes to the files on the computer,” as claimed, and even *teaches away*. Still with respect to the present grouping, and specifically appellant’s claimed technique “wherein the factors are updated based on the requests,” the Examiner has responded to appellant’s arguments, as noted in the Office Action mailed 1/12/06, by stating that in WFP “when a file is changed to an incorrect version, WFP replaces the file with the correct version, which is both altering and updating.” Appellant respectfully asserts that WFP only teaches responding to the actual modifications of files, and not to “update[ing] based on the requests” (emphasis added), as claimed by appellant.

In the Examiner’s Answer mailed 08/23/2006, the Examiner has argued that “[a]gain, the file is the factor and when the incorrect version of a file is detected it is replaced with the correct version based on the detection, i.e. the file is updated to the correct version” and that “monitoring for modifications corresponds to monitoring write requests as discussed above.” Appellant respectfully disagrees with the Examiner’s arguments, and respectfully asserts that, in WFP, the

file is updated after being modified. Thus, the update is based on the modification, which clearly does not meet appellant's claimed "factors [that] are updated based on the requests" (emphasis added), as claimed by appellant, where the requests are "requests to write to the files on the computer," in the context as claimed by appellant.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir.1991).

Appellant respectfully asserts that at least the first and third elements of the *prima facie* case of obviousness have not been met, for the reasons noted above.

Group #2: Claim 28

With respect to the present grouping, the Examiner has relied upon pages 1-2 in WFP to make a prior art showing of appellant's claimed technique "wherein the at least one of critical files and critical file locations are looked up based on requests to write to the at least one of critical files and critical file locations on the computer."

Appellant respectfully asserts that pages 1-2 from WFP merely teach "cache[ing] all protected system files" in order to replace any modified protected files. However, restoring protected system files from a cache or installation media after they are modified clearly fails to even suggest a technique "wherein the at least one of critical files and critical file locations are looked up based on requests to write to the at least one of critical files and critical file locations on the computer" (emphasis added), as claimed by appellant.

In the Examiner's Answer mailed 08/23/2006, the Examiner has argued that "WFP disclose[s] that when a file is modified to an incorrect version, the correct version of that file is looked up and replaced with the correct version of the file from a cache as shown on the bottom of page 1 to the top of page 2 and is therefore looked up based on the request to write." Appellant respectfully disagrees with the Examiner's argument and respectfully asserts that WFP merely teaches that the "Windows File Protection feature is implemented when it is notified that a file in a protected folder is modified" and that "[o]nce the notification is received, the Windows File Protection feature determines which file was changed" (emphasis added). Further, WFP teaches that "Windows File Protection feature looks up the file signature in a catalog to determine if the new file is the correct Microsoft version" and "[i]f it is not, the file is replaced from the Dllcache folder" (emphasis added). However, WFP's disclosure of being notified when a file is modified, looking up the new file signature to determine if it is the correct version, and replacing it from the Dllcache folder simply fails to even suggest a technique "wherein the at least one of critical files and critical file locations are looked up based on requests to write to the at least one of critical files and critical file locations on the computer" (emphasis added), as claimed by appellant. Clearly, WFP's notification after a file is modified fails to suggest a look up "based on requests to write to the at least one of the critical files and critical file locations on the computer," in the manner as claimed by appellant, and even *teaches away*.

Again, appellant respectfully asserts that at least the first and third elements of the *prima facie* case of obviousness have not been met, for the reasons noted above.

Group #3: Claims 3 and 16

With respect to the present grouping, the Examiner has relied on page 2 in WFP to make a prior art showing of appellant's claimed technique "wherein the factors are user configurable." Appellant respectfully asserts that the only mention of users in the excerpt from WFP is that an "administrator [has] the ability to scan all protected files to verify their versions" and that an "administrator [is prompted] to insert the appropriate media to replace the file." Clearly, neither teaching even suggests user configurable factors, in the manner claimed by appellant.

In the Office Action mailed 01/12/2006, the Examiner has responded to appellant's arguments by stating that "at the bottom of page 1 WFP teaches that a user can allow a file to be updated and therefore the [user] configures a factor." Appellant respectfully disagrees. The bottom of page 1 in WFP only discloses that the Windows File Protection feature is notified of a file modification and that the Windows File Protection feature looks up the file signature in a catalog to determine if a new file is the correct Microsoft version. Thus, in WFP, only the Windows File Protection feature allows files to be updated, which clearly does not meet appellant's claimed "factors [that] are user configurable" (emphasis added). Appellant also notes that the only mention of users in WFP discloses that an "administrator [has] the ability to scan all protected files to verify their versions" and that an "administrator [is prompted] to insert the appropriate media to replace the file." Clearly, neither teaching even suggests user configurable factors, in the manner claimed by appellant.

In the Examiner's Answer mailed 08/23/2006, the Examiner has argued that "page 2 [of] WFP states that the cache size can be adjusted by the administrator, therefore depending on the size of the cache a different number of factors will be stored and is thereby configurable by the administrative user." Appellant respectfully disagrees with the Examiner's argument and asserts that WFP merely discloses that "[t]he SFCQuota setting can be made as large or small as needed by the system administrator" and "[s]etting the SFCQuota value to 0xFFFFFFFF causes the Windows File Protection feature to cache all protected system files" (emphasis added). Appellant respectfully asserts that, as noted by the Examiner, only the cache size can be adjusted, where such cache size is used for keeping verified file versions cached. Clearly, in WFP, the cache size is not a factor in the context claimed by appellant, since appellant claims "factors [that] are altered based on the monitoring of the requests to write to the files on the computer" (see the independent claims for context).

Again, appellant respectfully asserts that at least the first and third elements of the *prima facie* case of obviousness have not been met, for the reasons noted above.

Group #4: Claims 9, 10, 22, and 23

With respect to the present grouping, the Examiner has again relied on pages 2-3 in WFP to make a prior art showing of appellant's claimed techniques "wherein the factors are updated based on a user request" (Claim 9 et al.) and "wherein the factors are updated from a remote location via a network" (Claim 10 et al.). Appellant respectfully asserts that WFP only teaches responding to modifications of files, and not to requests, as claimed by appellant (Claim 9 et al.). In addition, WFP fails to even mention any sort of updating, and especially not updating factors, as claimed by appellant (Claims 9 and 10 et al.), but instead only discloses repairing incorrect file versions.

In the Office Action mailed 01/12/2006, the Examiner has responded to appellant's arguments by stating that "when a file is changed to an incorrect version, WFP replaces the file with the correct version, which is both altering and updating." Appellant again respectfully asserts that WFP only teaches responding to the actual modifications of files, and not to requests, as claimed by appellant (Claim 9 et al.). In addition, WFP fails to even mention updating factors, as claimed by appellant (Claims 9 and 10 et al.), but instead only discloses replacing files.

In the Examiner's Answer mailed 08/23/2006, the Examiner has argued that "the System File Checker tool, 'gives an administrator the ability to scan all protected files to verify their versions' which is a user request to determine when a file is modified and whenever a file is modified to an incorrect version it is replaced with the correct version, i.e. update the file, from a cache." Further, the Examiner has argued that "[t]his updating of files, from a cache, can be from either 'a local path or network path'" and "[t]herefore, WFP discloses updating from a remote location via a network."

Appellant respectfully disagrees with the Examiner's arguments and asserts that WFP merely discloses that "[t]he System File Checker tool gives an administrator the ability to scan all protected files to verify their versions" where modified files of an incorrect version are "replaced from the Dllcache folder" (emphasis added). However, the mere disclosure that the System File Checker scans and verifies files, and replaces modified files simply fails to suggest that the "factors are updated based on a user request" (Claim 9 et al. – emphasis added), in the manner as claimed by appellant.

Further, WFP discloses that “[t]he SFCDllCacheDir value can either be a local path or a network path” (emphasis added). However, the mere disclosure of replacing files from a Dllcache folder that may be a network path fails to suggest that the “factors are updated from a remote location via a network” (Claim 10 et al. – emphasis added), in the manner as claimed by appellant.

Again, appellant respectfully asserts that at least the first and third elements of the *prima facie* case of obviousness have not been met, for the reasons noted above.

Group #5: Claims 12 and 25

With respect to the present grouping, the Examiner has relied on the bottom of page 2 in WFP to make a prior art showing of appellant’s claimed technique for “conditionally preventing the writes to the files on the computer based on a user confirmation.” Appellant respectfully asserts that the excerpt from WFP relied upon by the Examiner merely teaches that “if the affected file in use by the operating system is not the correct version or the file is not cached in the Dllcache folder, the Windows File Protection feature attempts to locate the installation media.” WFP continues by teaching that “[i]f the installation media is not found, the Windows File Protection feature prompts an administrator to insert the appropriate media to replace the file or the Dllcache file version” (emphasis added). Clearly, suggesting to prompt an administrator to insert media in order replace the file or Dllcache file, as in WFP, fails to even suggest a technique for “conditionally preventing the writes to the files on the computer based on a user confirmation” (emphasis added), as claimed by appellant.

In the Examiner’s Answer mailed 08/23/2006, the Examiner has argued that “as discussed above WFP prevents the writes to a file and when the file is not found in the cache the system prompts a user to insert the appropriate media to replace the file.” Further, the Examiner has argued that “[w]hen the user inserts the media the file with the correct version is copied from the media and replaces the incorrect version of the file in the system thereby preventing the writing of the file with the incorrect version” and “[s]ince this situation can only be done with a user inserting the media it is based on the users confirmation of the prompt from the WFP.”

Appellant respectfully disagrees with the Examiner's arguments and asserts that the Examiner's arguments are contradictory. In particular, the Examiner argues that "WFP prevents the writes to a file... and prompts a user to insert the appropriate media to replace the file" (emphasis added). If WFP prevented the write to the file, as the Examiner has argued, then there would not be any need to replace the file since it would not have been written to. Further, WFP merely discloses that "the Windows File Protection feature prompts an administrator to insert the appropriate media to replace the file or the Dllcache file version" (emphasis added). Clearly, WFP's disclosure of replacing the file after it is modified fails to suggest "conditionally preventing the writes to the files on the computer based on a user confirmation" (emphasis added), as claimed by appellant.

Again, appellant respectfully asserts that at least the first and third elements of the *prima facie* case of obviousness have not been met, for the reasons noted above.

Group #6: Claim 30

With respect to the present grouping, the Examiner has relied on page 2 in WFP to make a prior art showing of appellant's claimed technique "wherein the factors include a list of critical files such that the list of critical files is updated based on the requests." Appellant respectfully asserts that page 2 in WFP teaches that "[a]ll SYS, DLL, EXE, TTF, FON and OCX files included on the Windows 2000 CD-ROM are protected" and that "[s]etting the SFCQuota value to 0xFFFFFFFF causes the Windows File Protection feature to cache all protected system files (approximately 2,700 files)." Clearly, disclosing that all SYS, DLL, EXE, TTF, FON and OCX files are protected and that the SFCQuota value determines the size of the Dllcache folder simply fails to even suggest a technique "wherein the factors include a list of critical files such that the list of critical files is updated based on the requests" (emphasis added), as claimed by appellant.

In the Examiner's Answer mailed 08/23/2006, the Examiner has argued that "when the cache does not hold all of the critical files specified on page 2, and a modification is made to a critical file not in the list, the media (Windows 2000 CD-ROM) is inserted and the list now contains all the files and the list is thereby updated based on the modification which corresponds to the write requests as described above."

Appellant respectfully disagrees with the Examiner's arguments and asserts that WFP merely discloses "[i]f the affected file in use by the operating system is not the correct version or the file is not cached in the Dllcache folder, the Windows File Protection feature attempts to locate the installation media" and "[i]f the installation media is not found, the Windows File Protection feature prompts an administrator to insert the appropriate media to replace the file or the Dllcache version" (emphasis added). However, prompting the administrator to insert appropriate media to replace the file or the cache version when an affected file is not the correct version or is not cached, as in WFP, simply fails to suggest a technique "wherein the factors include a list of critical files such that the list of critical files is updated based on the requests" (emphasis added), as claimed by appellant. Clearly, updating a file in a cache fails to suggest that a "list of critical files is updated based on the requests" where the requests are "requests to write to the files on the computer" (emphasis added), in the context as claimed by appellant.

Again, appellant respectfully asserts that at least the first and third elements of the *prima facie* case of obviousness have not been met, for the reasons noted above.

Issue # 2:

The Examiner has rejected Claims 8, 21, and 31 under 35 U.S.C. 103(a) as being unpatentable over WFP, in view of Rickey et al., in view of Stevens (U.S. Publication No. 2002/0133702).

Group #1: Claim 8 and 21

With respect to the present grouping, the Examiner has relied upon Page 1 from WFP, and Paragraph 0019 from Stevens to make a prior art showing of appellant's claimed technique "wherein the factors include trusted applications that initiate the requests."

"The above five functions implemented by the present invention allow the system firmware (BIOS) to determine that a trusted application is attempting access and then to grant the requested access." (Stevens, Paragraph 0019 - emphasis added)

Appellant respectfully asserts that the excerpt from Stevens merely discloses “allow[ing] the system firmware (BIOS) to determine that a trusted application is attempting access and then...grant[ing] the requested access” (emphasis added). Clearly, the system firmware granting requested access when the system firmware determines that a trusted application is attempting access, as in Stevens, simply fails to even suggest a technique “wherein the factors include trusted applications that initiate the requests” (emphasis added), as claimed by appellant. There simply is no disclosure in the excerpt from Stevens that a trusted application initiates the request, in the manner claimed by appellant.

In the Examiner’s Answer mailed 08/23/2006, the Examiner has argued that “Stevens teaches that trusted applications attempting access (therefore requesting access) are granted the requested access.” Appellant respectfully disagrees and asserts that Stevens merely discloses a trusted application attempting access, which fails to even suggest a technique “wherein the factors include trusted applications that initiate the requests” (emphasis added), where the requests are specifically “requests to write to the files on the computer” (emphasis added), in the context claimed by appellant.

Again, appellant respectfully asserts that at least the first and third elements of the *prima facie* case of obviousness have not been met, for the reasons noted above.

Group #2: Claim 31

With respect to the present grouping, the Examiner has relied on page 1 in WFP to make a prior art showing of appellant’s claimed technique “wherein if one of the requests is initiated by an application that is not one of the trusted applications, a user is alerted and allowed to at least one of prevent and permit the request initiated by the application.” Appellant respectfully asserts that page 1 from WFP discloses that “[t]he Windows File Protection feature provides protection for the system files using two mechanisms.” WFP teaches that the first mechanism of “[t]he Windows File Protection feature is implemented when it is notified that a file in a protected folder is modified.” Clearly, the excerpt from WFP fails to even suggest a technique “wherein if one of the requests is initiated by an application that is not one of the trusted applications, a user is alerted and allowed to at least one of prevent and permit the request initiated by the

application” (emphasis added), as claimed by appellant. Additionally, appellant respectfully asserts that the Windows File Protection feature is invoked only after a file is replaced or deleted, and not before. Thus, WFP fails to suggest that “a user is alerted and allowed to at least one of prevent and permit the request initiated by the application” (emphasis added), as claimed by appellant.

In the Examiner’s Answer mailed 08/23/2006, the Examiner has stated that Claim 31 “was improperly rejected only under WFP in view of Rickey, when claim 31 depends from claim 8 which was rejected under WFP in view of Rickey et al and further in view of Stevens and is hereby corrected.” Further, the Examiner has argued that “WFP teaches altering a user when a file is modified, which corresponds to the request to write, in order to replace it with the correct version and Stevens teaches allowing a trusted application access and therefore does not allow untrusted application access.”

Appellant respectfully disagrees and asserts that WFP merely teaches that “[t]he Windows File Protection feature is implemented when it is notified that a file in a protected folder is modified” (emphasis added). Further, Stevens discloses “allow[ing] the system firmware (BIOS) to determine that a trusted application is attempting access and then to grant the requested access” (emphasis added). However, the mere disclosure that a trusted application attempting access is granted the requested access, as in Stevens, and that the Windows File Protection is notified when a file is modified, as in WFP, simply fails to suggest a technique “wherein if one of the requests is initiated by an application that is not one of the trusted applications, a user is alerted and allowed to at least one of prevent and permit the request initiated by the application” (emphasis added), as claimed by appellant. Clearly, Steven’s disclosure that trusted applications are granted access fails to teach a situation where an “application...is not one of the trusted applications,” in the manner as claimed by appellant. Further, WFP’s disclosure of notifying WFP when a file is modified fails to meet appellant’s claimed “user [that] is alerted and allowed to at least one of prevent and permit the request,” in the manner as claimed by appellant.

Again, appellant respectfully asserts that at least the first and third elements of the *prima facie* case of obviousness have not been met, for the reasons noted above.

In view of the remarks set forth hereinabove, all of the independent claims are deemed allowable, along with any claims depending therefrom.

In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (408) 971-2573. For payment of any additional fees due in connection with the filing of this paper, the Commissioner is authorized to charge such fees to Deposit Account No. 50-1351 (Order No. NAI1P055/01.228.01).

Respectfully submitted,

By: _____

Date: _____

10/23/06

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Docket No.: NAIIP055/01.228.01

App. No: 10/028,651

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Kevin J. Zilka

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October 23, 2006